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State v. Baker Appellant's Brief Dckt. 43552

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43552
)	
v.)	ADA COUNTY NO. CR 2012-5592
)	
MEGAN ERIN BAKER,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Megan Baker pled guilty to one count of possession of a controlled substance, methamphetamine. She received a unified sentence of seven years, with two years fixed, but the district court retained jurisdiction. The district court placed Ms. Baker on probation after her rider; however, when Ms. Baker violated the terms of her probation, the district court revoked probation.

On appeal, Ms. Baker contends that the district court abused its discretion in revoking her probation.

Statement of the Facts and Course of Proceedings

On December 26, 2011, Megan Baker gave birth to a baby girl, S.B., in Weiser, Idaho. (State's Exhibit 1, p.3; R., p.52.) After S.B. was born, Ms. Baker's urine tested positive for THC.¹ (State's Exhibit 1, pp.6-7; R., p.39, 52.) During a well check visit by the Idaho Department of Health and Welfare approximately two weeks later, on January 10, 2012, Ms. Baker was questioned about her drug use, and provided a sample to be tested for illegal drugs. (R., pp.39-40; 10/1/12 Tr., p.8, Ls.6-21.) When interviewed, Ms. Baker admitted to officers that she would test positive for marijuana and that she had used methamphetamine twelve days before S.B. was born. (R., pp.39-40; 10/1/12 Tr., p.8, 13-22.) The sample Ms. Baker provided was positive for amphetamines, methamphetamines and THC. (R., p.40; 10/1/12 Tr., p.8, Ls.15-21.)

On April 16, 2012, the State charged Ms. Baker with one count of felony possession of a controlled substance, methamphetamine and/or amphetamine, and one count of misdemeanor possession of a controlled substance, marijuana. (R., pp.27-28.) The State filed a Part II enhancement for a second offense under the Uniform Controlled Substances Act as Ms. Baker had a previous conviction, nine years prior, for delivery of a controlled substance. (R., pp.33-34.)

Counsel for Ms. Baker filed a Motion to Dismiss in which Ms. Baker argued that the mere presence of a controlled substance in her system coupled with a vague admission cannot amount to a sufficient legal basis to uphold a conviction for

¹ The record is not clear whether Ms. Baker's urine tested positive for the substance tetrahydrocannabinol ("THC"), the active compound in marijuana, or whether it tested positive for "Carboxy-THC," a commonly found marijuana metabolite that is not a drug or intoxicating substance. See *Reisenauer v. State, Dep't of Transp.*, 145 Idaho 948, 950-951 (2008).

possession of a controlled substance. (R., pp.39-41.) After hearing the arguments of counsel, the district court denied Ms. Baker's motion to dismiss. (R., p.59; 10/1/12 Tr., p.10, Ls.4-9.)

Ms. Baker entered a conditional guilty plea to the charge of felony possession of a controlled substance, preserving her right to challenge the district court's denial of her motion to dismiss on appeal; in exchange, the State agreed to dismiss the misdemeanor possession charge and to limit its recommendation to an underlying sentence of seven years unified, with three years fixed, and to recommend probation, with a period of time in county jail. (R., pp.60-67, 69-70; 10/15/12 Tr., p.11, L.24 – p.13, L.17.) The district court accepted Ms. Baker's plea and ordered a substance abuse evaluation, a mental health evaluation and a Presentence Investigation ("PSI"). (10/15/12 Tr., p.24, Ls.18-23.) The district court imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction over Ms. Baker for a period of up to 365 days. (R., pp.72-73; 12/3/12 Tr., p.42, Ls.5-8.) Ms. Baker filed a timely *pro se* Notice of Appeal. (R., pp.75-79.) On appeal, she asserted that the district court erred in denying her motion to dismiss, but the Idaho Court of Appeals affirmed the decision of the district court in an unpublished opinion, *State v. Baker*, No. 40613, Unpublished Opinion No. 476 (Ct. App. Apr. 24, 2014).

At the conclusion of the rider program, the district court placed Ms. Baker on probation for a period of seven years. (Limited Clerk's Record on Appeal ("Supp. R."), pp.13-18.)

A report of probation violation was filed against Ms. Baker which alleged that Ms. Baker had failed to attend/complete programming, smoked methamphetamine,

spice and bath salts, changed residence without permission from her probation officer, consumed alcohol, and failed to make herself available for supervision. (Supp. R., pp.19-28.) Ms. Baker admitted to violating some of the terms and conditions of her probation. (Supp. R., p.41; 6/22/15 Tr., p.4, L.6 – p.5, L.24.) Pending her sentencing on the probation violations, Ms. Baker was released on bond. (Supp. R., p.42.) During that period of time, the State filed a motion to revoke bond alleging Ms. Baker failed to check in with pretrial services and bond was revoked. (Supp. R., pp.43-47, 50.)

The State filed a second motion for probation violation which alleged Ms. Baker failed to report to her probation officer, failed to submit to a urinalysis test, failed to maintain full-time employment, and failed to allow herself to be supervised. (Supp. R., pp.52-56.) Pursuant to negotiations with defense counsel, the State agreed to withdraw the second motion for probation violation. (Supp. R., p.61.) In exchange, the defense agreed to stipulate to a prison sentence, not to ask for bond, and agreed to allow the State to argue the new alleged conduct. (8/17/15 Tr., p.5, Ls.5-14; Supp. R., p.61.)

The district court revoked Ms. Baker's probation. (Supp. R., pp.63-65.)

Ms. Baker filed a motion requesting leniency under I.C.R. 35, and she submitted a brief in support of the motion. (Supp. R., pp.66-70.) That motion was denied without a hearing. (Supp. R., pp.79-80.)

Ms. Baker filed a timely Notice of Appeal. (Supp. R., pp.71-73.) Ms. Baker contends on appeal that the district court abused its discretion by revoking her probation.²

ISSUE

Did the district court abuse its discretion when it revoked Ms. Baker's probation and executed her unified sentence of seven years, with two years fixed?

ARGUMENT

The District Court Abused Its Discretion When It Revoked Ms. Baker's Probation And Executed Her Sentence

Mindful that Ms. Baker agreed to be sentenced to prison, Ms. Baker asserts that the district court abused its discretion when it revoked her probation and executed her original unified sentence of seven years, with two years fixed.³ She asserts that her probation violations did not justify revoking probation, especially in light of the goals of rehabilitation and the fact that the protection of society could be best served by her continued supervision under the probation department.

In light of the significant progress Ms. Baker made while on probation, her probation violations did not justify revoking probation. There are generally two

² Ms. Baker does not assert that the district court erred in denying her I.C.R. 35 motion as she did not include new or additional information in support of the motion. See *State v. Huffman*, 144 Idaho 201, 203 (2007) (holding "[a]n appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information.")

³ Ms. Baker stipulated to the execution of the previously suspended sentence in exchange for the State's dismissal of the second motion for probation violation. (8/17/15 Tr., p.5, Ls.5-14; Supp. R., p.61.) Ms. Baker told the district court at sentencing that she would like to participate in a therapeutic community program or have work center options, and that she was "okay with having [her] time imposed." (10/29/15 Tr., p.13, Ls.9-11.)

questions that must be answered by the district court in addressing allegations of probation violations: first, the court must determine whether the defendant actually violated the terms and conditions of her probation; and second, if a violation of probation has been found, the trial court must then decide the appropriate remedy for the violation. *State v. Sanchez*, 149 Idaho 102, 105 (2009). “The determination of whether a probation violation has been established is separate from the decision of what consequence, if any, to impose for the violation.” *Id.* (quoting *State v. Thompson*, 140 Idaho 796, 799 (2004)). Once a probation violation has been found, the district court must determine whether it is of such seriousness as to warrant revoking probation. *State v. Chavez*, 134 Idaho 308, 312 (Ct. App. 2000). However, probation may not be revoked arbitrarily. *State v. Adams*, 115 Idaho 1053, 1055 (Ct. App. 1989). The district court must decide whether probation is achieving the goal of rehabilitation and whether probation is consistent with the protection of society. *State v. Leach*, 135 Idaho 525, 529 (Ct. App. 2001). If a knowing and intentional probation violation has been proved, a district court’s decision to revoke probation will be reviewed for an abuse of discretion. I.C. § 20-222; *Leach*, 135 Idaho at 529.

Only if the trial court determines that alternatives to imprisonment are not adequate in a particular situation to meet the state's legitimate interest in punishment, deterrence, or the protection of society, may the court imprison a probationer who has made sufficient, genuine efforts to obey the terms of the probation order. *State v. Lafferty*, 125 Idaho 378, 382 (Ct. App. 1994).

Ms. Baker could continue receiving the help she needs to avoid relapsing again while she resides in the community, thus the goal of protection of society would be

achieved. Ms. Baker asserts that the district court abused its discretion in finding that her probation violations justified revocation.

CONCLUSION

Ms. Baker respectfully requests that this Court remand her case to the district court with an order that she be placed on probation or that her case be remanded to the district court for a new probation violation hearing.

DATED this 18th day of February, 2016.

_____/s/_____
SALLY J. COOLEY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18th day of February, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

MEGAN ERIN BAKER
INMATE #71237
PWCC
1451 FORE ROAD
POCATELLO ID 83204

DEBORAH A BAIL
DISTRICT COURT JUDGE
E-MAILED BRIEF

BRIAN C MARX
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

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E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

SJC/eas